California Nurses Association *and* Alta Bates Medical Center. Case 32–CB–4545

September 30,1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On December 31, 1996, Administrative Law Judge Burton Litvack issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel and Charging Party each filed cross-exceptions with supporting arguments, and the Respondent filed an answering brief to the cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified by this Decision and Order,[1] and to substitute the attached notice for that of the administrative law judge.

For the reasons stated by the judge, we agree that the Respondent violated Section 8(b)(3), as alleged in the complaint, by refusing to provide the Employer with the facts and documents relevant to each incident on which the Respondent is relying to support its grievance and the names of persons involved in each incident. See, e.g., *Asarco, Inc.,* 316 NLRB 636, 643 (1995); *Fairmont Hotel,* 304 NLRB 746 (1991); *Transport of New Jersey,* 233 NLRB 694, 695 (1977); *Firemen & Oilers Local 288 (Diversy Wyandotte),* 302 NLRB 1008, 1008–1009 (1991). We further agree with the judge that as to those documents that the Employer already possesses, the Respondent need only identify them to the Employer, without physically providing them or disclosing the specific facts in them on which it relies or the theories it will pursue at arbitration.

Contrary to the judge, however, we find no 8(b)(3) violation with respect to the Respondent's refusal to provide the Employer with the names of witnesses it intends to call, and the evidence on which it intends to rely, at the arbitration hearing. Thus, it is well settled that there is no general right to pretrial discovery in arbitration proceedings. *Tool & Die Maker's Lodge 78 (Square D Co.),* 224 NLRB 111, 112 (1976); *Cook Paint & Varnish Co.,* 246 NLRB 646 (1979), enf. denied on other grounds 648 F.2d 712 (D.C. Cir. 1981).

ORDER

The National Labor Relations Board orders that the Respondent, California Nurses Association, Oakland, California, its officers, agents, and representatives shall

1. Cease and desist from failing and refusing to furnish Alta Bates Medical Center, pursuant to its August 16, 1995 information request and, in advance of the arbitration hearing on its August 29, 1994 grievance, as amended, the names of witnesses and other facts and documents relied on by it in support of its grievance, as amended, including any documents on which it relied to support factual assertions in its July 28, 1995 information response, and notice of specific incident reports and other documents in the possession of Alta Bates Medical Center on which it relied to support the grievance as amended.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish Alta Bates Medical Center with the facts and documents relevant to each incident on which it is relying to support its August 29, 1994 grievance, as amended, and the names of persons involved in those incidents, including any documents on which it relied in support of factual assertions in its July 28, 1995 information response, and notice of specific incident reports and other documents in possession of Alta Bates Medical Center on which it is relying to support its August 29, 1994 grievance, as amended.

(b) Within 14 days after service by the Region, post at its business offices and meeting halls in Berkeley and Oakland, California, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Within 14 days from the date of this Order sign and return to the Regional Director sufficient copies of the notice for posting by Alta Bates Medical Center, if willing, at all places where notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official, on a form provided by the Region, attesting to the steps that the Respondent has taken to comply.

[1] We have deleted the general injunctive language from the recommended Order and notice because no violation of Sec. 8(b)(1)(A) has been found and Sec. 8(b)(1)(A) is not a derivative violation of a Sec. 8(b)(3) violation. *National Maritime Union,* 78 NLRB 971 (1948), enfd. 175 F.2d 686 (2d Cir. 1949), cert. denied 338 U.S. 954 (1950), cited with approval in *NLRB v. Drivers Local 639 (Curtis Bros.)*, 362 U.S. 274 (1960).

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Alta Bates Medical Center by failing and refusing to furnish it, pursuant to its August 16, 1995 information request and, in advance of the arbitration hearing on its August 29, 1994 grievance, as amended, the facts and documents on which we are relying in support of our grievance, as amended, including the names of persons involved in the incidents and any documents on which we relied to support factual assertions in our July 28, 1995 information response, and specific incident reports and other documents in the possession of Alta Bates Medical Center on which we are relying to support the grievance as amended.

WE WILL furnish to Alta Bates Medical Center the names of witnesses and other facts and documents on which we relied in support of our August 29, 1994 grievance, as amended, including any documents on which we relied to support factual assertions in our July 28, 1995 information response, and notice of specific incident reports and other documents in the possession of Alta Bates Medical Center on which we relied in support of our August 29, 1994 grievance, as amended.

CALIFORNIA NURSES ASSOCIATION

Elaine Climpson, Esq., for the General Counsel.
Pamela Allen, Esq. (Eggleston, Siegel, & Levitter), of Oakland, California, for the Respondent.
Mark Theodore, Esq. (Jackson, Lewis, Schnitzler & Krumpman), of San Francisco, California, for the Charging Party

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge, Alta Bates Medical Center (Alta Bates) filed the unfair labor practice charge in the above-captioned matter on January 10, 1996. Based on the unfair labor practice charge, the Regional Director for Region 32 of the National Labor Relations Board (the Board) issued a complaint, alleging that California Nurses Association (Respondent) had engaged in, and was engaging in, acts and conduct violative of Section 8(b)(3) of the National Labor Relations Act (the Act). Respondent timely filed an answer, essentially denying the commission of any of the alleged unfair labor practices and alleging certain affirmative defenses. Pursuant to a the notice of hearing, which accompanied the complaint, the above-captioned matter was scheduled for trial and heard by me on May 28, 1996, in Oakland, California. At the trial, all parties were afforded the opportunity to examine and cross-examine witnesses, to offer into the record any relevant documentary evidence, to argue their legal positions orally, and to file posthearing briefs. The latter documents were filed by counsel for all parties, and each post-hearing brief has been carefully considered. Accordingly, based on the entire record herein,[1] including the posthearing briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Alta Bates, a State of California corporation, is engaged in the operation of an acute-care hospital facility in Berkeley, California. During the 12-month period, which preceded the issuance of the complaint in the above-captioned matter, in the normal course and conduct of its above-described business operations, Alta Bates derived gross revenues in excess of $250,000 and purchased and received goods and services, valued in excess of $5000, which originated outside the State of California. Respondent admits that Alta Bates is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Respondent admits that it is a labor organization within the meaning of Section 2(5) of the Act.

III. ISSUES

The General Counsel alleges that, in response to a grievance filed by Respondent on August 29, 1994, subsequently amended four times, alleging various violations of the parties' existing collective-bargaining agreement related to a work redesign program proposed by Alta Bates, by letters dated August 16 and 21, 1995, the latter requested that Respondent provide it with certain factual information including dates of incidents, names of witnesses, and other facts and documents relating to the grievance's assertion that Alta Bates' work redesign proposal jeopardized nurse licensure and patient safety and that Respondent engaged in conduct, violative of Section 8(b)(3) of the Act, by delaying in responding to Alta Bates' information requests until December 19, 1995, and by failing and refusing to furnish the requested information to Alta Bates since the date. Respondent denies the commission of the alleged unfair labor practices and alleges that the instant unfair labor practice allegations are time barred by Section 10(b) of the Act; that Alta Bates already possesses the requested information; and that Alta Bates is not entitled to information beyond which had previously been produced.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Facts

Alta Bates operates an acute-care hospital facility in Berkeley, California. Respondent has had a collective-bargaining relationship with Alta Bates since, at least, 1980, with the former as the representative for purposes of collective bargaining of the hospital's graduate nurses, registered nurses, assistant

[1] None of the parties called any witnesses. Rather, they presented the matter to the undersigned by way of numerous exhibits including legal filings, letters between the parties, and other documents. Bearing in mind that the documents contain much barely understandable technical jargon and that several facts are not clearly delineated, based upon the documentary record, I have, nevertheless, formulated, what I believe is, a coherent and accurate factual account of the parties' dispute.

head nurses, and charge nurses, who are performing nursing services as defined in the parties' successive collective-bargaining agreements, the most recent of which is effective from June 22, 1994, through June 30, 1997. Joanne Carder is the director of employee labor relations for Alta Bates and Lori Liederman, a labor representative, is an agent of Respondent.

The record establishes that the genesis of the labor dispute, which precipitated the instant alleged unfair labor practices, occurred on December 28, 1993, when, based upon statements of management officials and other information, Joe Lindsay, then a labor representative for Respondent, wrote to Carder that Respondent had become aware that two of the hospital's wings, the 4East family care center and the 4West medical-surgical unit, would be merged; that Alta Bates "contemplated changes" in the responsibilities of bargaining unit nurses and those of patient care assistants; and that the changes in the increased responsibilities of the latter employees, who are in a separate bargaining unit, involved direct patient care and were, therefore, violative of the parties' collective-bargaining agreement. Further, Lindsay requested certain information, regarding his contentions, from Carder. Slightly more than 2 weeks later, on January 12, 1994, Carder wrote to Lindsay that Alta Bates was, indeed, contemplating changes in the above-hospital units but that "we are still in the analysis stage and nothing has been finalized" and that job descriptions also were in "the development stage" and no changes had as yet been approved. In addition, Carder denied any violation of the collective-bargaining agreement with regard to patient care assistants and promised to "contact" Lindsay when Alta Bates completed its planning. On February 1, Lindsay, in writing, responded to Carder, stating that management officials had informed bargaining unit nurses that "restructuring plans would be implemented in April and that such included eliminating the charge nurse position and creating a new job classification–case manager. Further, he accused Carder of failing to accurately reflect the current status of Medical Center restructuring" and demanded immediate bargaining as what Alta Bates contemplated involved "fundamental changes in the scope and nature of CNA-represented positions as well as transfers of bargaining unit work to non-unit personnel . . . ." Included in Lindsay's letter was a lengthy information request, consisting of 25 items. Within 2 weeks, on February 14, Carder responded in writing, acknowledging that Alta Bates was contemplating "a number of possible" restructuring changes including the role of the charge nurse. While denying any plans to create a case manager position, Carder stated that the hospital did desire to make changes in 4East and 4West as well as other units, adding that "because we have not completed our analysis, bargaining is premature" and no proposals had been formulated for discussion. In her letter, Carder included answers to Lindsay's information request.

During the next several months, further communications regarding Alta Bates' plans for its 4East and 4West wings and for restructuring the role of its bargaining unit nurses, both of which were now incorporated in what was termed the hospital's "work redesign" program, seem to have been held in abeyance while the parties completed negotiations on their 1994–1997 collective-bargaining agreement. Upon final agreement on the successor agreement in June, on July 18, Carder wrote to Lori Liederman, stating that Alta Bates anticipated that Respondent desired to commence formal negotiations on the hospital's work redesign plans and suggesting available dates for the bargaining. In two reply letters, Liederman set forth detailed information requests and stated that Respondent would be ready for negotiations upon review of the requested information and that, as Alta Bates' work redesign would also impact upon the patient care assistant bargaining unit, Respondent and the labor organization, which represented the patient care assistants, desired joint negotiations.

While various dates were suggested, the record reveals that the parties met on August 5, in order to discuss Alta Bates' work redesign concept and that, at this meeting, the hospital's representatives presented a written proposal to Respondent's representatives, detailing its scheme for eliminating the registered nurse positions in 4West, in the family care center, in the medical-surgical float pool, and in the perinatal float pool and replacing them with individuals in a new, supervisorial position, entitled "care coordinator." The proposal established the selection process for this position and an accompanying job description, and the hospital's representatives stated that the hospital had a "target date" for implementing work redesign—September 6. Respondent's representatives expressed their opposition to Alta Bates' work redesign proposal at the August 5 meeting and at another meeting on August 25, and, on August 22, Liederman wrote to Carder, requesting specified information in order to evaluate the proposal. Subsequently, on August 29, Respondent filed a grievance, pursuant to the existing collective-bargaining agreement's grievance procedure, alleging contract violations in that, by scheduling the distribution of work redesign materials for August 30, Alta Bates was unilaterally implementing a new application process and creating positions "that would require the nurse to practice in a manner which is inconsistent with the highest level of patient care in terms of the patient's health and safety and in a manner which would place the nurse's license in jeopardy."[2] The next day, Carder wrote to Liederman, informing Respondent that the hospital would delay implementation of its work redesign plan for 2 weeks—until September 20. On September 6, Liederman submitted a "supplemental information request" to Carder, seeking such information as "copies of all written patient complaints and copies of documents reflecting oral patient complaints concerning treatment received." On September 9, representatives of the parties met again to discuss the hospital's work redesign concept; however, nothing was resolved.

Besides the aforementioned contract grievance, Respondent engaged in other activities to thwart Alta Bates' implementation of its work redesign program. Thus, on September 13, it engaged in picketing and handbilling outside the hospital, and, on the same date, filed a class action lawsuit, in Alameda County Superior Court, against Alta Bates, alleging unfair business practices in connection with the impact of hospital industry restructuring upon patient care. Thereafter, on September 16, Carder wrote to Liederman, informing the latter of the hospital's decision to again postpone implementation of its work redesign program from September 20 until October 4 "in order to provide [Respondent] another opportunity to get involved and bargain" over the program." At the same time, Alta Bates informed Respondent that it would not agree to submit Respondent's August 29 grievance to arbitration, and, on October 3, Respondent filed a lawsuit in Alameda County Superior

[2] Subsequently, Respondent amended this grievance on November 3 and December 13, 1994, and February 27 and March 31, 1995, to include further alleged violations of the collective-bargaining agreement with regard to Alta Bates' implementation of its work redesign program.

Court, seeking either a preliminary injunction prohibiting implementation of the work redesign program or an order compelling immediate arbitration of the above grievance.[3] In response, Alta Bates asserted that the lawsuit was premature and Respondent's grievance was not arbitrable as its work redesign program remained the subject of negotiations and that, in any event, implementation was not scheduled until some time in 1995. Shortly thereafter, the Employer successfully removed this lawsuit to United States District Court in which forum Alta Bates continued to oppose Respondent's demands for arbitration of its grievance. On December 21, Carder wrote to Liederman, offering to Respondent an "alternative" work redesign proposal, which addressed Respondent's objection that Alta Bates' plan transformed registered nurses into supervisors within the meaning of the Act. Carder stated that "the main feature" of the alternative plan eliminated the nurses' authority to hire, fire, and discipline and that, in contrast to the original proposal, the alternative plan provided for selection of applicants for the position of "registered nurse care coordinator" by seniority and qualifications. Subsequent to the hospital's announcement of its alternative work redesign proposal, the parties held, at least, six bargaining sessions without reaching agreement. Thereafter, on February 1, 1995, Carder wrote to Liederman, announcing that Alta Bates had decided to "move forward on the basis of the alternative proposal" and to implement it on March 6. The implementation occurred as scheduled.

During the next 3 months, Liederman and Carder and the respective attorneys for Alta Bates and Respondent engaged in exchanges of correspondence. The crux of the Alta Bates letters to Respondent's representatives was a desire to meet and discuss the latter's August 29, 1994 grievance and amendments in order for Respondent to inform Alta Bates "of the specific allegations and detailed facts of how [the hospital's] work redesign proposal . . . violates the [collective-bargaining agreement] . . . ." In a letter dated April 3, the hospital's counsel advised counsel for Respondent that this information was necessary for the "collective bargaining arena." On April 11, counsel for Respondent wrote to counsel for Alta Bates, stating that the theory, underlying the grievance, was Respondent's contention that "[Alta Bates'] plan has required and continues to involve a significant transfer of RN duties to non-RNs and unlicensed personnel which threaten patient safety and jeopardize nurse licensure." On April 18, counsel for Alta Bates submitted a written reply to Respondent's counsel, terming his letter a formal request for detailed and specific information regarding how, and in what manner, the work redesign plan implemented on 4West and the Family Care Center threatens or even negatively impacts patient care and nurse licensure. On April 25, counsel for Respondent responded, stating that the details of his client's grievances had been explained to the hospital during the various meetings, between the parties, in 1994 and in correspondence between their representatives. He then averred that litigation of grievances neither was subject to formal pleading rules nor was subject to the requirements of Federal civil procedure.

With matters in the foregoing posture and with Respondent's lawsuits, seeking an order to compel arbitration and alleging unfair business practices, pending, on May 17, Joanne Carder wrote to Lori Liederman, requesting specific information concerning Respondent's evidence as to how and in what manner the hospital's work redesign program jeopardized nurse licensure and threatened patient safety. In addition, in her letter, Carder requested specific information as to which RN duties were being transferred to unlicensed, nonbargaining unit personnel in violation of the existing collective-bargaining agreement, as to which provisions of the contract were being violated by the hospital's implementation of work redesign, and as to the allegations of the various grievance amendments. Thereafter, on July 28, in an eight page letter to Carder, Liederman responded to the foregoing information request, stating that much of the requested nurse licensure and patient care information had been orally transmitted to the hospital by Respondent's representatives during meetings concerning work redesign in August, September, and October 1994, and January 1995.[4] Then, Liederman addressed Carder's May 17 information request point by point, stating that the hospital's work redesign program adversely impacted upon nurse licensure and patient safety "in theory and in fact," setting forth numerous assertions of fact and, as sources for Respondent's allegations, generally pointing to previous correspondence between the parties, articles and accompanying bibliographies in Respondent's newsletter, State of California health care rules and regulations, and reports of unnamed experts. In addition, Liederman averred that Respondent had not yet decided who would be witnesses in its behalf and stated that, while she believed she had responded with sufficient information to clarify the grievance, "we are not required to conduct our entire case in advance."

Approximately 3 weeks later, on August 16, 1995, Carder responded to Liederman's letter with her own 16-page letter in which she requested more specific information on 33 subjects raised by Liederman in her letter. Thus, 30 of the information requests involve assertions of fact by Liederman regarding the effect of the hospital's work redesign program upon nurse licensure and patient safety and, for each, Carder sought the following: the dates of the alleged precipitating incident or incidents, the names of Respondent's members who personally observed the incident or incidents, the names of Respondent's members who complained to Alta Bates management regarding the incident or incidents, the number of patients involved, identification of any substantiating documents, and the specific facts which substantiate Respondent's conclusions. Next, Carder requested that Liederman identify each of Respondent's witnesses, who would testify at the arbitration of the grievances regarding the threats to nurse licensure and patient safety posed by the work redesign program. Further, Carder requested "anecdotal information" as to the threats to nurse licensure, posed

[3] In conjunction with this lawsuit, Respondent filed a discovery motion in conjunction with its "unfair business practice" lawsuit against the Respondent, not as part of its suit to compel arbitration. It sought, among other items, from Alta Bates, documents known as "incident reports," summaries of the reports, and related documents from January 1992 to the present and complaints, reports, and other documents concerning the quality of patient care subsequent to implementation of the hospital's work redesign plan. The record discloses that the incident reports are generated by Alta Bates' bargaining unit employees, concern any incidents relating to patient care and safety on the work redesign units, and contain all relevant information regarding the incidents including dates, the names of witnesses, and descriptions of what occurred.

[4] Of course, the hospital's work redesign program had not, as yet, been implemented at the time of these meetings.

by the hospital's work redesign program and closed her letter by stating, ".[W]e do not ask that you conduct your case at this time. Nevertheless, we are entitled to this information so that we can evaluate your claim."[5] Liederman offered no reply to Alta Bates' information request until December 19 when, by letter to Carder, she wrote that "we believe that our previous response of July 28, 1995 [to Carder's May 17 information request] more than satisfies CNA's obligations under the National Labor Relations Act."

Thereafter, on or about February 29, 1996, the United States Court of Appeals for the Ninth Circuit upheld the order of a district court judge, granting Respondent's lawsuit to compel Alta Bates, which has never evinced any desire to settle the matter, to arbitrate its August 29, 1994 grievance, and, on April 10, in Respondent's unfair business practices lawsuit, an arbitrator, who was appointed by the Alameda County Superior Court, granted Respondent's discovery motion, including that Alta Bates produce all its incident reports from 1992 to date.[6] Thereafter, the arbitration of Respondent's amended grievance was scheduled for July 16, 1996, with Respondent continuing to refuse to transmit any further information, beyond what Liederman stated in her July 28 letter, to Alta Bates with regard to its assertions underlying the grievance. With regard to potential witnesses, at the instant hearing, counsel for Respondent stated that her client had not yet decided upon its witnesses but that Alta Bates has access to the each of Respondent's potential witnesses by virtue of the unfair business practices lawsuit.

B. Legal Analysis

There is no dispute herein as to the applicable legal principles. At the outset, the Board has long held that a labor organization's duty to furnish information pursuant to Section 8(b)(3) of the Act is parallel to that of an employer's obligation to furnish information pursuant to Section 8(a)(1) and (5) of the Act. *Firemen & Oilers Local 288 (Diversy Wyandotte),* 302 NLRB 1008, 1009 (1991); *Service Employees Local 144 (Jamaica Hospital)*, 297 NLRB 1001, 1003 (1990); *Northern Air Freight*, 283 NLRB 922 (1987). In this regard, it has long been established that, generally, an employer is under a statutory obligation to, upon request, provide a labor organization, which is the collective bargaining representative of the employer's employees, with information which is necessary and relevant for the proper performance of the labor organization's duties in representing the bargaining unit employees. *NLRB V. Acme Industries Co.,* 385 U.S. 432 (1967); *NLRB v. Truitt Mfg Co.,* 351 U.S. 149 (1956); *Aerospace Corp.,* 314 NLRB 100 (1994). This duty to provide information encompasses not only material necessary and relevant for the purpose of contract negotiations but also information necessary for administration of a collective-bargaining agreement, including information required by the labor organization to process a grievance through arbitration. *Acme Industrial,* supra; *Jewish Federation Council of Greater Los Angeles,* 306 NLRB 507 (1992); *Bacardi Corp.,* 296 NLRB 1220 (1989); *Howard University,* 290 NLRB 1006 (1988). The furnishing of information, which is probably relevant to a disposition of the grievance, to the party not in possession of that information is required so that the parties to the grievance procedure have the opportunity to "'evaluate the merits of the claim'" and work toward settlement. *Firemen & Oilers,* supra at 1008. The standard for relevancy is a "liberal discovery-type standard," with the sought-after evidence not having to be necessarily dispositive of the issue between the parties but only of some bearing upon it and of probable use to the labor organization in carrying out its statutory responsibilities. *Bacardi Corp.,* supra*; Howard University,* supra; *Pfizer, Inc.,* 268 NLRB 916 (1984). Necessity is not a guideline in itself but rather is directly related to relevancy, and only the probability that the requested information will be of use to the labor organization need be established. *Bacardi Corp.,* supra. Finally, "part of the duty to supply relevant information includes the duty to do so in a timely manner," and the failure to do so constitutes a violation of . . . the Act*." San Francisco Newspaper Agency,* 309 NLRB 901 (1992); *Mary Thompson Hospital,* 296 NLRB 1245, 1250 (1989).

Respondent filed its grievance, regarding Alta Bates' work redesign program, on August 29, 1994, and, at all times thereafter prior to February 29, 1996, the latter contended the grievance was not arbitrable, fought Respondent's lawsuit to compel arbitration, and revealed no indication of an amenability to settle the dispute. In these circumstances, I harbor qualms as to whether, as of December 19, 1995, Respondent was under any bargaining obligation to have provided information, regarding the said grievance and subsequent amendments, to Alta Bates in excess of what Lori Liederman had provided in her July 28, 1995 information response letter to Joanne Carder. Nevertheless, as the instant complaint alleges continuing unfair labor practices, I believe that, subsequent to February 29, 1996, Respondent clearly was under a bargaining obligation to furnish Alta Bates with much of the information requested, by Carder in her letter dated August 16, 1995, and additional information and that, by failing and refusing to do so, it engaged in acts and conduct violative of Section 8(b)(3) of the Act. Thus, given Liederman's December 19 letter to Carder, in which she belatedly refused to provide the requested information, it is clear that Carder's information request remained viable and unsatisfied. Moreover, on February 29, 1996, the Ninth Circuit Court of Appeals issued its decision, upholding an earlier district court decision, compelling Alta Bates to arbitrate Respondent's August 29, 1994 grievance and subsequent amendments, and the parties eventually selected an arbitrator and scheduled an arbitration hearing for July 16, 1996. Further, approximately six weeks after the Ninth Circuit ruling, on April 10, pursuant to a discovery motion in conjunction with Respondent's unfair business practices lawsuit against Alta Bates, the latter was ordered to provide numerous documents to Respondent including incident reports, which information Respondent conceded would be helpful in establishing the validity of its grievance. Accordingly, an arbitration hearing on Respondent's grievance had been scheduled for July 16; at least 3 months prior to the scheduled commencement of the hearing, Respondent possessed all of the information sought by Carder in her August 16

[5] Five days later, Carder wrote to Liederman and amended her information requests, stating that rather than the names of Respondent's members, Respondent should provide the names of bargaining unit employees who complained to Respondent about incidents demonstrating the threats to nurse licensure and patient safety posed by the hospital's work redesign program.

[6] At the instant hearing, counsel for Respondent maintained that, while the issues involved in the lawsuit and in the grievance are different, the identical "body of evidence" is being utilized by Respondent to establish Alta Bates' culpability in both actions. Thus, in connection with discovery procedures in the lawsuit, extensive depositions were taken from registered nurses in Respondent's bargaining unit, and, apparently, significant portions of the depositions concern issues related to Respondent's grievance. There is no dispute that Alta Bates has access to these depositions.

letter to Liederman; and, as the Board has long held, ". . . the existence of an arbitration proceeding does not relieve a party from its duty to furnish relevant information requested by the other party." *San Francisco Newspaper Agency,* 309 NLRB 901 at 901 (1992).[7]

As set forth above, in her August 16, 1995 information request to Liederman, for each of the latter's approximately 30 assertions of fact in her July 28 information response letter, Carder requested that Respondent specify the dates on which incidents occurred, state the names of bargaining unit employees who observed what occurred, identify all documents relating to the incident, and set forth all relevant facts. In addition, Carder requested the names of all witnesses, who Respondent intended to call as witnesses at the arbitration hearing and "anecdotal information" about each of the above incidents. Initially, there can be no doubt that, prior to the arbitration hearing, Alta Bates was entitled to the names of all individuals, whom Respondent intended to call as witnesses at the proceeding and that Respondent's failure and refusal to transmit such information, which was plainly relevant to Alta Bates for purposes of its preparation prior for the arbitration hearing, violated Section 8(b)(3) of the Act. *Fairmont Hotel,* 304 NLRB 746 (1991); *Transport of New Jersey,* 233 NLRB 694, 695 (1977). Moreover, I believe that, in advance of the arbitration hearing, as well as to the specific depositions of potential witnesses, transcripts of which both parties undoubtedly possessed, and other documents, upon which Liederman relied in her July 28, 1995 information response letter and Respondent would rely for evidence at the arbitration hearing, Alta Bates was entitled to receive from Respondent notice of the specific incident reports and other materials, copies of which were received from the hospital by Respondent during the discovery process in the unfair business practices lawsuit and upon which Respondent would rely for evidence at the arbitration hearing. Obviously, said information was necessary and relevant to Alta Bates for its preparation for the pending arbitration hearing of Respondent's grievance. The Board has held that similar reports and documents must be provided prior to the arbitration of grievances, and Respondent's failure and refusal to provide this information was unlawful. *Postal Service,* 305 NLRB 997, 998 (1991); *New Jersey Bell Telephone Co.,* 300 NLRB 42, 43 (1980).[8] However, I agree with counsel for Respondent that its obligations with regard to the reports and other documents did not extend beyond providing documents, which Alta Bates does not possess, and specifying the particular incident reports[9] and other documents upon which it was relying. Thus, in my view, prior to the arbitration hearing itself, requiring Respondent to disclose to Alta Bates the particular facts, contained in the reports and documents, which form the basis for its evidence at the arbitration hearing, to explain and define its theories, or to describe its evidence with precision would intrude upon the authority of the arbitrator to establish the rules for discovery preceding the arbitration hearing and violate the Board's own admonition that "there is . . . no statutory obligation on the part of [each party] to turn over to the other evidence of an undisclosed nature that the possessor of the information believes relevant and conclusive with respect to its rights in an arbitration proceeding." *Tool & Die Makers' Lodge 78, IAM,* 224 NLRB 111 at 111 (1976).[10] Based upon the foregoing, I find that Respondent engaged in conduct, violative of Section 8(b)(3) of the Act, by, pursuant to Carder's August 16, 1995 information request letter and in advance of the arbitration hearing on its August 29, 1994 grievance and amendments, failing and refusing to provide to Alta Bates the names of all individuals, whom it intended to call as witnesses at the arbitration hearing, any documents upon which Lori Liederman relied for support for her statements in her July 28, 1995 letter and it would rely for evidence at the arbitration hearing, and notice of the particular incident reports and documents, which were in the possession of Alta Bates and upon which it would rely in support of its allegations at the arbitration hearing .[11]

CONCLUSIONS OF LAW

1. Alta Bates is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

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[7] In my view, the oblique nature of the Board's language represents tacit recognition that establishing the rules and regulations for discovery during an arbitration proceeding is the province of the arbitrator and that the Board law regarding a party's bargaining obligation to transmit requested information to the opposing party may conflict. While I am, of course, obligated to apply Board law in this area, there does not appear to be a Board decision which demarcates the precise point of conflict. Nevertheless, I do not believe that the Board has ever meant to intrude upon the authority of arbitrators in this regard, and my conclusions herein are reflective of such a view.

[8] Counsel for Respondent argues that it should not be required to specify upon which incident reports it shall rely in the arbitration proceeding as Alta Bates has not specified any particular incidents about which it seeks information and as the hospital's demand is burdensome and open-ended. Of course, said defense is ludicrous on its face. Thus, by placing the burden upon the hospital to specify the precise incidents, about which it seeks information, counsel for Respondent is demanding that the hospital exhibit clairvoyance and divine information about which only Respondent has knowledge—a magic trick beyond the Board's power to command. Moreover, counsel for Respondent chose not to call any witnesses; therefore, there has been no showing that providing the requested information would unduly burden Respondent.

[9] As I stated above, the incident reports apparently contain the dates of the occurrence and the names of individuals, who witnessed the event, and descriptions of what occurred.

[10] I find without merit Respondent's affirmative defense that the filing of the instant unfair labor practice charge was outside the 6-month statute of limitations period established by Sec. 10(b) of the Act. Thus, the 6-month period did not commence running until Respondent notified Alta Bates of its refusal to furnish requested information—December 19, 1995—just a month prior to the filing of the unfair labor practice charge. Put another way, Alta Bates had no notice of Respondent's unfair labor practice until Liederman's above letter. *New Jersey Bell Telephone Co.,* 289 NLRB 318 at 318 fn. 2 (1988).

[11] I shall recommend dismissal of the allegation that Respondent violated Sec. 8(b)(3) of the Act by unlawfully delayed in responding to Alta Bates' August 16 information request. Thus, in *Teamsters Local 921,* supra, the Union provided information 4 months after such was requested. Likewise, in *Top Job Bldg. Maintenance Co.,* 304 NLRB 902 (1991), the respondent provided information after a delay and offered no excuse that the delay was unavoidable. Herein, rather than merely delaying in doing so, Respondent has never provided the requested information to Alta Bates, and Lori Liederman's December 19, 1995 letter constituted an outright refusal to do so. In these circumstances, as any delay by Respondent appears to have been subsumed by its outright refusal to provide any of the requested information, this particular allegation appears to be superfluous, and I shall recommend dismissal of the applicable paragraph of the complaint.

3. Respondent is the exclusive collective-bargaining representative within the meaning of Section 9(a) of the Act of certain of Alta Bates' employees in the following appropriate unit:

> All graduate nurses, registered nurses, assistant head nurses, and charge nurses employed by Alta Bates at its Berkeley, California facility performing nursing services as set forth in the parties' collective-bargaining agreement; excluding all other employees, supervisors as defined in the Act, administrative and executive personnel having the authority to hire, discipline, discharge, or determine personnel policies, guards and supervisors as defined in the Act.

4. By failing and refusing to furnish to Alta Bates, pursuant to Carder's August 16, 1995 information request letter and in advance of the arbitration hearing of its August 29, 1994 grievance and related amendments, the names of all individuals whom it intended to call as witnesses in its behalf at the arbitration hearing, any documents upon which Lori Liederman relied for her assertions of fact in her July 28, 1995 information response and it would rely for evidence at the said arbitration hearing, and notice of specific incident reports and other documents which were in the possession of Alta Bates and upon which it would rely for evidence at the said arbitration hearing, Respondent engaged in acts and conduct violative of Section 8(b)(3) of the Act.

5. Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

6. Unless specifically found above, Respondent engaged in no other unfair labor practices.

REMEDY

Having found that Respondent has engaged in serious unfair labor practices within the meaning of Section 8(b)(3) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative actions necessary to effectuate the purposes and policies of the Act. Specifically, inasmuch as Respondent failed and refused to furnish to Alta Bates the requested names of all individuals whom the former intended to call as witnesses at the arbitration hearing on its August 29, 1994 grievance and related amendments, documents upon which it would rely for evidence at the arbitration hearing, and notice of specific incident reports and other documents which were in the possession of Alta Bates and upon which it would rely at the arbitration hearing, I shall recommend that, upon request, Respondent be ordered to furnish the information to Alta Bates.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, California Nurses Association, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish to Alta Bates Medical Center, pursuant to Alta Bates Medical Center's August 16, 1995 information request and in advance of the July 16, 1996 arbitration hearing on its August 29, 1994 grievance and related amendments, the names of all individuals whom it intended to call as witnesses at the said arbitration hearing, all documents upon which it relied for the assertions of fact in its July 28, 1995 information response letter and would rely for evidence at the said arbitration hearing, and notice of specific incident reports and other documents, which remained in the possession of Alta Bates Medical Center and upon which it would rely for evidence at the arbitration hearing.

(b) In any like or related manner interfering with, restraining, or coercing employees of Alta Bates Medical Center in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes and policies of the Act.

(a) On request, furnish to Alta Bates the names of any individuals whom it intends to call as witnesses at the July 16 arbitration hearing, any documents which it utilized as support for the assertions of fact in its July 28, 1995 information response and upon which it would rely for evidence at the arbitration hearing, and notice of the specific incident reports and other documents upon which it would rely at the arbitration hearing.

(b) Within 14 days after service by the Region, post at its business offices and meeting halls in Berkeley and Oakland, California, copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director of Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained by it for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has ceased representing the bargaining unit employees or Alta Bates has closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current bargaining unit employees and former bargaining unit employees employed by the Alta Bates at any time since January 10, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official, on a form provided by the Region, attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges that Respondent engaged in conduct violative of Section 8(b)(3) of the Act by delaying in responding to a request for necessary and relevant information.

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Alta Bates Medical Center by failing and refusing to furnish to it, pursuant to its information request, datd August 16, 1995, and in advance of the arbitration hearing of our August 29, 1994 grievance and related amendments, the names of all individuals who we intend to call as witnesses at the arbitration hearing, any documents which we utilized as support for our assertions of fact in our July 28, 1995 information response and upon which we intend to rely at the arbitration hearing, and notice of the specific incident reports and other documents which are in the possession of Alta Bates Medical Center and upon which we intend to rely at the arbitration hearing.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

WE WILL , upon request, furnish to Alta Bates Medical Center, pursuant to its August 16, 1995 information request and in advance of the arbitration hearing on our August 29, 1994 grievance and related amendments, the names of all individuals whom we intend to call as witnesses at the arbitration, any documents upon which we relied as support for our assertions of fact in our July 28, 1995 information response and upon which we intend to rely for evidence at the arbitration hearing, and notice of the specific incident reports and other documents, which are in the possession of Alta Bates Medical Center and upon which we intend to rely for evidence at the arbitration hearing.

CALIFORNIA NURSES ASSOCIATION